

OPINION  
52-41

July 9, 1952 (OPINION)

ESTATES

RE: Succession

Your letter of July seventh re above estate has been received.

It is my opinion that your question is answered by section 56-0104(4)(a). You state: "There is no father, mother, brother or sister surviving, only nieces and nephews, etc."

I understand from this that there is no surviving widow or child. If this be the case, then the matter is controlled by the above subsection, which reads thus:

"If the decedent leaves:

- a. No issue, nor husband, nor wife, nor father, nor mother, nor brother, nor sister, then the estate goes to the next of kin in equal degree, except that when there are two or more collateral kindred in equal degrees but claiming through different ancestors, those who claim through the nearest ancestors must be preferred over those claiming through an ancestor more remote;--"

This subsection has not been construed, but it is my opinion that nephews and nieces--that is, children of brothers or sisters--would share equally. Thus, if there be, for example, one child of a brother and two children of a sister, each would take a third of the estate. But if a nephew or niece has died before the death of this deceased leaving, say two children, such two children will take only the share that their parent would have taken if he or she had survived this deceased. Thus, the next of kin "in equal degree" share and share alike, but their heirs share by right of representation.

ELMO T. CHRISTIANSON

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